IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 628 OF 2007

3 Global Services Private Limited, Mumbai. ... Petitioner.

V/s.

The Income-tax Officer 9(1)-4 and others. ... Respondents.

S.E.Dastoor i/b. Rajesh Shah & Co. for the petitioner.

Mr Ashok Kotangale for the respondents.

CORAM : DR.S.RADHAKRISHNAN and V.C.DAGA, JJ.

DATED : 11th June 2007.

P.C. :

. Heard learned senior counsel for the petitioner and learned counsel for the respondents.

2. Perused petition and impugned orders.

3. By this petition, the petitioner is challenging the order dated 19th February, 2007 passed on the stay application seeking stay of the recovery of demand under section 220(6) of the Income Tax Act, 1971, whereby the assessing officer has kept in abeyance 50% of demand of Rs.1,36,93,692/- and directed the petitioner to make deposit of balance 50% of demand amounting to Rs.68,46,846/- by paying it in five equal monthly instalments commencing from 15th

March, 2007.

4. The Commissioner of Income-tax, vide order dated 22nd February, 2007, has declined to interfere with the above order dated 19th February, 2007 holding that no prima facie case is made out to interfere with the said order.

5. The contention of the petitioner is that absolute stay ought to have been granted considering prima facie; case made out by them; mainly on the ground that the Transfer Pricing Officer (T.P.O.) did not grant opportunity of personal hearing while determining arm’s length price.

6. Mr.Dastoor submits that T.P.O. while fixing arm’s length price disclosed certain incomparable transactions dated 19th December, 2006 with which the petitioner had no opportunity to deal with.

7. We find that the petitioner was given an opportunity to make its written submission which the petitioner made on 19th July, 2006. The T.P.O has passed order on 19th December, 2006.

8. The legality of the order of the T.P.O. would be open to judicial scrutiny in appeal.

9. The Commissioner of Income Tax- 9, Mumbai has taken into account the above aspect of the matter to consider prima facie case and affirmed the order of the Assessing Officer in the facts and circumstances of the case and waived 50% of the deposit and directed deposit of balance 50% by equal monthly instalments from 15th March, 2007.

10. We do not find any erroneous or illegal approach in the impugned order. The view taken by the authorities below is a reasonable view. The discretion has been properly exercised. This court not being a court of appeal cannot substitute its own views in place of impugned order. The petition is, therefore, devoid of any merits.

11. Petition is dismissed in limine with no order as to costs.

(V.C.DAGA, J.) **(DR.S.RADHAKRISHNAN, J.)**